

DENIED.

That Is What Happened To Captain
Ross's Petition.

JUDGE BICKERTON UPHOLDS
THE OAHU ELECTION.

Full Text of the Opinion by the Court
—The Legislature Forgot to Say
That the Ballots Should Be
Printed in Native.

IN THE SUPREME COURT OF THE HAWAIIAN ISLANDS.

In the matter of the Petition of JOHN ROSS and others to vacate an election of Nobles for the Division of Oahu.

BEFORE BICKERTON, J.

The petition sets forth that the petitioners, fifty-one in number, are residents of Oahu; that they voted or were entitled to vote for Nobles of the Kingdom at the general election held on the Island of Oahu on the third day of February, 1892.

That the election was held; that proper returns were made; and that certificates of election were made, signed and delivered to the persons so declared to be elected. That duplicates of the certificates, together with the tabulated returns, were transmitted by said Marshal to the Minister of the Interior; that the following named gentlemen were declared elected: J. N. S. Williams, John A. Cummins and Paul Neumann for the term of six years, John Ena for the unexpired term of four years, and Arthur P. Peterson for the unexpired term of two years.

That C. B. Maile, John Ross, Henry Waterhouse, John Emmeluth, A. Marques and Samuel M. Kaukai, candidates for six years, E. B. Thomas for four years, and James Gay for two years, were formally and legally qualified and registered as such candidates; that their several names appeared, together with those before named, on the ballots provided by the Minister of the Interior for use.

That it then was and is the law that each ballot should express in the Hawaiian language what it did in the English language; that none of the ballots used at said election contained any Hawaiian words expressing what was printed in English.

That in the preparation and printing of said ballots the Minister of the Interior refused and neglected to insert therein the Hawaiian equivalent of the name of said candidate Henry Waterhouse, viz: the word "Wakalahau," although said Minister was formally requested to insert said Hawaiian equivalent, and although all of the said ballots contained the Hawaiian equivalents of the names of all the others of said candidates having foreign names.

That by reason of such omission from said ballots of said words in the Hawaiian language, and of the Hawaiian equivalent of the name of said Henry Waterhouse, it was impossible for Hawaiian voters for Nobles who were unacquainted with the English language (of whom there were several hundreds) to learn the meaning or particulars of said ballots, and consequently were thereby deprived of their legal and constitutional rights under the law.

And prays that said election be vacated and declared null and void.

The specification appended to the petition is in this form:

ELECTION FOR THE YEAR 1892.

DIVISION OF OAHU.

FOR NOBLES.

For Six Years.

C. B. MAILE.

HENRY WATERHOUSE.

J. N. S. WILLIAMS.

(Williams).

PAUL NEUMANN.

(Paul Neumann).

A. MARQUES.

(Makuka).

JOHN ROSS.

(Kapeka Loke).

J. A. CUMMINS.

(Keoni Kamika).

JOHN EMMELUTH.

(Emaluka).

SAM'L M. KAAUKAI.

Special Election.

For the Unexpired Term of Four Years.

E. B. THOMAS (Kamika).

JOHN ENA (Keoni Ina).

Special Election.

For the Unexpired Term of Two Years.

JAMES GAY (Kimo Ke).

A. P. PETERSON (Aka Piketona).

The law under which these proceedings are brought, is Chapter LXXXVI, of the Session Laws of 1890, being "An Act to Amend and Consolidate the Election Laws of the Kingdom." Sections 87, 88, 89 and 90 of said Act read as follows:

"Section 87. In addition to the methods heretofore set forth for vacating any seat in the Legislature, any candidate, or any thirty persons who have voted, or were entitled to vote in the district, may file a petition addressed to the Chief Justice of the Supreme Court, setting forth any cause or causes why an election shall be vacated or a seat be declared vacant. Such petition shall be filed in the office of the Clerk of the Supreme Court within thirty days following an election, and prior to the hearing thereon the Clerk shall receive a deposit of such costs as may be necessary in the case. The hearing may be had before any Justice of the Supreme Court, and shall be held in the Judicial Circuit wherein the election is disputed. Provided, however, that the Supreme Court shall have no jurisdiction over any such case during the session of the Legislature."

"Section 88. A notice of not less than fourteen days shall be given to the Inspectors of such election as may be contested, and to the candidate who shall have been returned, or whose seat is contested, and to any other whose rights or interests are particularly affected, who shall be designated by the Chief Justice of the Supreme Court. Besides such notice, a written or printed notice shall be likewise posted in the district, or published in some newspaper circulating in the district, for not less than ten days prior to such hearing."

"Section 89. No person who has voted at any election shall, in any legal proceeding, be required to state for whom he has voted."

"Section 90. At the hearing the

Justice shall cause the evidence to be reduced to writing in full, or sufficiently to ascertain all of the facts involved, and shall thereupon give judgment, stating all of his findings of fact and the law thereupon, which shall then be transmitted in full to the Minister of the Interior, provided no appeal shall be taken. If such finding shall be that the election was invalid, and the seat therefore vacant, a new election shall at once be ordered by the said Minister."

As Section 90 requires the Justice hearing the case to state "all his findings of fact and the law thereupon," I will first proceed to find from the evidence the facts.

I find the following facts to have been shown and proved by the evidence:

1. That thirty-nine of the petitioners have voted for Nobles at the election held on the third day of February, A. D. 1892, on the Island of Oahu.

2. That four of said petitioners, to wit: A. Marques, E. B. Thomas, C. B. Maile and John Ross, were candidates for Nobles at said election, but were not declared elected;

3. That the petition herein filed, was filed in the office of the Clerk of the Supreme Court within thirty days following said election;

4. That notice of not less than fourteen days of said petition and of the time set for hearing the same was given to the Chairmen of the several Boards of Inspectors of said election for the Island of Oahu, and also to all the candidates for Nobles who were returned as elected at said election, by service made by the Marshal upon each of them of a copy of the following order:

"The petition of John Ross and fifty others, having this day been filed in the office of the Clerk of the Supreme Court, addressed to the Chief Justice of the said Court, and setting forth certain causes whereby it is claimed by said petitioners that the late election for Nobles, in and for the Island and Division of Oahu, held on the third day of February, A. D. 1892, was and is invalid, null and void, and should be vacated, and praying for a hearing of said petition, and for judgment that said election was and is invalid, null and void."

"Therefore it is hereby ordered that said petition be heard before said Justice of the Supreme Court as shall be sitting at Chambers, at Alioli Hale in Honolulu, on the said Island of Oahu, at 10 o'clock A. M., on Monday the 21st day of March, instant, when and where all persons interested may appear and show cause, if any they have, why the prayer of said petition should not be granted."

"And also, that a copy of this order and notice be served by the Marshal upon each Chairman of the several Boards of Inspectors of Election, and for the several precincts of said division of Oahu, and upon J. N. S. Williams, John A. Cummins, Paul Neumann, John Ena and Arthur P. Peterson, they being the candidates who were returned and certified as having been elected at said election, as Nobles for said division."

"And also, that a copy of this order and notice be published in the English and Hawaiian languages, respectively, in the PACIFIC COMMERCIAL ADVERTISER (in English) and in Ka Leo o ka Lahui (in Hawaiian), they being newspapers printed and published within said island and division, for the space of ten days prior to the date hereby fixed for the hearing of said petition."

5. That a copy of said order and notice was published in the English language in the PACIFIC COMMERCIAL ADVERTISER and also in the Hawaiian language in Ka Leo o ka Lahui, newspapers printed and published in Honolulu, for more than ten days prior to the hearing;

6. That the said election was held and resulted as follows, viz: The several Inspectors of Election for the several precincts of said island and division, made their respective returns to the Marshal of the Kingdom, of the votes cast at the said election in said division, for candidates for Nobles, and that the said Marshal thereupon, and acting upon said returns and in conformity therewith, made, executed and signed certificates of election of Nobles for said island and division of Oahu, wherein was duly elected Noble for said island and division to serve for the term of two years next succeeding said election. That an original of said certificates was delivered by the said Marshal to each of the persons so declared to be elected, and duplicates of said certificates, together with the tabulated returns for said election, were transmitted by said Marshal to the Minister of the Interior as provided by Section 83 of Chapter 85, of the Acts of 1890.

7. That at the said election the following named persons, besides those above named, who were declared as aforesaid to be elected as Nobles, were also candidates for Nobles in said division, and were formally and legally qualified, notified and registered as such candidates as required by law in such cases, and their several names appeared on the ballots which were printed and provided by the Minister of the Interior for use, and which were used at and upon the said election, viz: C. B. Maile, John Ross, Henry Waterhouse, John Emmeluth, A. Marques and Samuel Kaukai as candidates for Nobles to serve for the term of six years; E. B. Thomas as a candidate for special election, to serve as a Noble for the unexpired term of four years, and James Gay as a candidate for special election as Noble to serve for the then unexpired term of two years.

8. That none of the ballots for the election of Nobles printed, furnished and used at and upon the election aforesaid, contained any of the words, "Koho ana no ka makahiki (1892)," or any Hawaiian words specifying the name of the office, or the name of the division for Nobles, or the term of the office, nor, in the case of said special elections, any words in the Hawaiian language specifying the unexpired term of the office; nor the words "Koho Balota Kuikawa," but that all of said Hawaiian words were omitted therefrom, as appears by the specimen of said ballots.

9. That none of said ballots contained any Hawaiian equivalent of the name of Henry Waterhouse, viz: that all of the said ballots did contain the Hawaiian equivalent of the names of all the others of said candidates having foreign names.

10. That there were about seven hundred native Hawaiians, voters for Nobles on the Island of Oahu, at the time of said election.

As to the facts alleged, that many

Hawaiian voters were prejudiced in the exercise of their franchise, or in their voting because of the fact that their words expressing in the Hawaiian language what had been printed in English on the ballots, not having been printed on the ballots, or the absence of the Hawaiian equivalent for the name of Henry Waterhouse, but that they failed to do so. The Court cannot supply a want in the law, or legislate and make laws; the Legislature, which is the representative of the people, makes the laws, and I have to take the law as I find it in the statute books and apply it to the facts of the case before me. I cannot stretch it to suit circumstances; I am confined to its provisions and requirements, and cannot go beyond them.

I have been inclined to reserve this question of law for the full Court, under Section 834 of the Compiled Laws, it being an important one under a new statute; but as Section 90 of this statute specially requires the Justice hearing the matter to give judgment, "stating all of his findings of fact and the law thereupon;" and Section 91 also provides that "The decision in all respects shall be subject to appeal to the Supreme Court in Banco," I feel it is incumbent on me to pass on the question. I therefore hold the ballot used at the last election for Nobles on the Island of Oahu, a specimen of which is here in this matter, being the one in question in this case is a good ballot, and complies with the requirements of the statute; consequently, on the findings of fact and law made by me here, I must deny the prayer of the petitioners and dismiss the petition.

And it is so ordered.

A. S. Hartwell and Ashford & Ashford for petitioners; Attorney-General Whiting and F. M. Hatch contra.

RICHARD F. BICKERTON, Justice Supreme Court.

March 30, 1892.

New Advertisements.

Election of Officers.

AT THE ANNUAL MEETING OF the Stockholders of the Inter-Island Steam Navigation Company, Ltd. held this day, the following Officers and Directors were elected for the ensuing year:

W. B. Godfrey, President.

J. Ena, Vice-President.

J. L. McLean, Treasurer.

W. H. McLean, Secretary.

T. W. Hobson, Auditor.

DIRECTORS:

W. B. Godfrey, J. Ena, G. N. Wilcox, W. O. Smith, F. A. Schaefer, W. H. McLean, Secretary.

Honolulu, March 28, 1892. 3033-6t

FOR SALE OR LEASE.

FOR EVERYTHING

ON AND AFTER APRIL 1st, that desirable Residence on Beretania Street, (Opp. residence of Col. C. P. Iaukea) at present occupied by G. B. C. d'Angelo, containing Parlor, Dining Room, Bed Room and Stationery Wash Basin, Bath Room with Patent Closet with hot and cold water attachment. Kitchen, Pantry, and China Closet on 1st floor. Second floor has 3 good Bed Rooms and a Sewing Room, above which is a look-out. Stable and Servants Room upon the ground which are neatly laid out. Terms reasonable.

For particulars enquire of N. F. BURGESS, Pensacola Street, 3029-2w Opp. Wm. Wilder's res.

Pianos For Rent.

PIANOS IN GOOD ORDER

MUSIC DEPARTMENT OF THE HAWAIIAN NEWS COMPANY. 2864-g

PIANO TUNING!

W. H. BENSON.

Leave orders on slate at Room 13, Arlington Hotel, Hotel St. 2866-1m*

Massage.

MRS. PRAY, HAVING RESUMED the practice of Massage, would be glad to see old friends and new at 150 Fort St., Chinese Church yard. 3029-1f

Trespass Notice.

ALL PERSONS ARE HEREBY FORBIDDEN to go on the lands of Waialeale and those adjoining and lying between the property of Hon. C. F. Iaukea at Waialeale and the land of Waialeale granted to H. Rogers in Manoa Valley, Oahu, without the written permission of the undersigned, otherwise action will be taken for trespass.

J. H. BOYD.

Honolulu, March 7, 1892. 3015-1m*

"KA MAILE," What they say:

IN THE McINERNEY BUILDING, FORT ST.

Is open now and offers an unexcelled Stock of Fancy Goods.

We make a specialty of Stamping Patterns and are now ready to take orders in that line. A brand new stock of Silk Embroideries, Art Linens, Tassels, Fringes, Draperies and other artistic goods are offered to the ladies of Honolulu.

"KA MAILE,"

IN THE McINERNEY BUILDING, FORT ST. 3028-tf

Particular attention kinds of Repairing. 2823-y

S. S. CO. 2841-y

SATURDAY EVENINGS TILL 9 O'CLOCK.

New Advertisements.

GOLDEN RULE BAZAAR

LATE A. L. SMITH'S STORE.

To the Public of the Hawaiian Islands:

OUR STOCK OF

Sewing Machines,

Domestic Paper

Patterns

And All Sewing Machine Accessories is now as complete as it is possible to keep them.

FULL AND COMPLETE

STOCK OF STATIONERY

Blank Books, School, Note and Exercise Books, Pens, Slates, Etc., Etc.

The Cheapest Line of

Guitars and Mandolins

—Ever offered.—

CROQUET SETS, LAWN TENNIS, RACKETS & BALLS, BASE BALLS, BATS, CAPS, GLOVES, Etc.,

A word about prices! Experience proves that it costs 10 per cent. to keep books, and at least 5 per cent. for bad debts, the result is we wish to set ourselves straight with the public.

Those who pay cash have no right to be charged the above 15 per cent., and we have determined to do business the same way as is done in San Francisco, on a CASH BASIS ONLY!

Our prices will thus be as low as purchasing for cash can make them, and we feel that the public will not be long in finding out the difference.

W. F. REYNOLDS, - Proprietor.

3008-3w

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S. S. CO. 2841-y

SATURDAY EVENINGS TILL 9 O'CLOCK.

New Advertisements.

NEW-YORK LIFE

Insurance Company.

JANUARY 1, 1892.

ASSETS - - - - - \$125,947,290.81

Liabilities, including the Reserve on all existing Policies [4 per cent. Standard] - - - - - 110,806,267.50

Total Undivided Surplus - \$15,141,023.31

Income - - - - - \$31,854,194.98

New Insurance Written in '91 152,664,982.00

Outstanding Insurance - 614,824,713.00

JOHN A. McCALL, President.

HENRY TUCK, Vice-President,

ARCHIBALD H. WELCH, 2d Vice-President.

GEORGE W. PERKINS, 3d Vice-President.

RUFUS W. WEEKS, Actuary.

A. HUNTINGTON, M. D., Medical Director.

CHARLES C. WHITNEY, Secretary.

HORACE C. RICHARDSON, Assistant Actuary.

EDMUND C. STANTON, Cashier.

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WM. C. WHITNEY,

WOODBURY LANGDON,

JOHN N. STEARNS.